

Analisis keputusan bisnis pada Badan Usaha Milik Negara berbentuk perseroan melalui penerapan doktrin fiduciary duty dan business judgment rules direksi studi kasus tindak pidana korupsi direktur BUMN = Analysis of business judgment on state owned limited liability enterprise through the application of director s fiduciary duty and business judgment rule doctrines case study on corruption cases of director's state owned limited liability enterprise

Agustina Arumsari, author

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Abstrak

Peranan Badan Usaha Milik Negara (BUMN) sangat dibutuhkan dalam penyelenggaraan perekonomian nasional. Di samping memberikan kontribusi kepada penerimaan Negara dalam bentuk dividen, BUMN juga mempunyai peranan strategis lain yaitu menghasilkan barang dan/atau jasa kepada masyarakat, pelopor sektor usaha yang yang belum diminati swasta, pelaksana pelayanan publik, penyeimbang kekuatan swasta juga turut mengembangkan usaha kecil/koperasi. Sebagai pengurus BUMN Perseroan, direksi memegang peranan yang sangat penting agar tujuan pendirian BUMN tercapai. Dalam mengurus perseroan, direksi harus mengambil berbagai keputusan bisnis yang memiliki risiko. Salah satu risiko yang mungkin terjadi adalah keputusan bisnis yang diambilnya merugikan perseroan. Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas memberikan perlindungan hukum kepada para direksi perseroan terbatas karena telah mengakomodasi doktrin fiduciary duty dan business judgment rule. Prinsip ini seharusnya juga berlaku di BUMN perseroan karena BUMN perseroan juga tunduk kepada prinsip-prinsip perseroan terbatas sebagaimana diatur dalam UU PT dan UU BUMN. Ada dua masalah yang dianalisis menyangkut penerapan kedua doktrin tersebut dalam BUMN perseroan yaitu : bagaimana doktrin fiduciary duty dan business judgment rule yang berasal dari common law principles diserap dalam UU PT dan UU BUMN dan bagaimana penerapan doktrin tersebut dapat digunakan sebagai pembelaan diri direktur BUMN perseroan yang didakwa merugikan keuangan negara dalam perkara tindak pidana korupsi. Dari hasil penelitian yang dilakukan dapat disimpulkan bahwa business judgment rule dalam UU PT berlaku sebagai standar of review. Unsur-unsur dalam business judgment rule diserap dalam UU PT ke dalam beberapa kualifikasi. Pembelaan diri sebagaimana kualifikasi tersebut bersifat kumulatif. Keberlakuan business judgment rule untuk direksi BUMN perseroan mengalami pergeseran dari wilayah hukum privat menjadi wilayah hukum publik karena definisi keuangan negara di pasal 2 dan 3 UU Pemberantasan Tindak Pidana Korupsi. Penerapan business judgment rule harus dilihat kasus demi kasus. Karena kualifikasi yang diserap dalam UU PT tidak secara jelas didefinisikan maka interpretasinya tergantung kepada pengetahuan hakim. Untuk itu perlu dilakukan sinkronisasi peraturan perundangan yang berkaitan dengan pengertian keuangan negara dan agar dilakukan kejelasan atas kualifikasi business judgment rule untuk meminimalkan perbedaan interpretasi hakim.

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State-Owned Limited Liability Enterprise (SOE) has a very important role in developing national economic. In addition to give money to the state receipts inthe form of dividends, SOE has strategic roles in making public goods andservices, pioneer in some business sectors, a counterweight private power also developing

small business. The SOE's board of directors holds a very important role to make sure that the purpose of SOE is achieved. In proposing the company, the board of directors shall take a variety of the business decision that bearing a risks. One of the risk that might happen to the business of his detrimental to the company. Law No.40/2007 on Limited Liability Company give a legal protection by accommodating the fiduciary duty and business judgment rule doctrines. These principles should also apply in SOE due to SOE is subject on limited liability company law. There are two problems concerning the application of that doctrines on SOE's : how the doctrines of fiduciary duty and business judgment rule comes from common law principles were absorbed in Law No.40/2007 on Limited Liability Company and Law No.19/2003 on SOE? How the application of these doctrines can be used as self defense of SOE's Director that charged in corruption case? From the research, we can concluded that the doctrines of fiduciary duty and business judgment rule we absorbed in Law No.40/2007 on Limited Liability Company and Law No.19/2003 on SOE. Business judgment rule doctrine was absorbed into several qualifications as a standard of review and it is a cumulative review. The application of that two doctrines to the SOE's board of directors were shifting from the area of private law to the public law area due to the definition of financial state scope according to article number 2 and 3 of the Law No.31/1999 jo Law No.20/2001 on Corruption Eradication. The application of business judgment rule should be seen a case by case. Because of qualifications that absorbed in Law No.40/2007 on Limited Liability Company were not clearly defined, its interpretation depends on judge's understanding. So, we need a synchronization of all legislation that related to the definition of financial state scope and we also need to clarify on qualifications to do business judgment rule in order to minimize the difference between judge's interpretation.